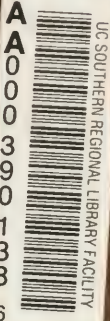


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Cape of Good Hope

Laws, Statutes, etc.

Law Relating to the
Solemnization of Marriages



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THE LAW

RELATING TO THE

SOLEMNIZATION OF MARRIAGES

IN THE COLONY OF THE

CAPE OF GOOD HOPE.

REVISED AND EDITED BY

MORGAN O. EVANS,

*Of Lincoln's Inn, Barrister-at-Law, Additional Legal Adviser,
Attorney General's Office.*

Published by Authority.

CAPE TOWN :

"CAPE TIMES" LTD., GOVERNMENT PRINTERS, KEEROM ST.

—
1903.



E.

R.

CAPE OF GOOD HOPE.

ACT

TO

Amend the Law relating to Marriage by Banns.

[Assented to 9th August, 1906.]

BE it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

Preamble.

Marriage by banns where published elsewhere.

1. In cases in which banns of marriage shall have been lawfully published in different places, both of which shall be in this Colony, or one of which shall be in this Colony and the other in another country, or each of which shall be in another country or other countries respectively, it shall be lawful for the officiating Minister in this Colony, upon production to him of the certificates of the due publication of the banns, to solemnize the marriage between the parties whose banns have been so duly published notwithstanding anything to the contrary in the Marriage Order in Council of the 7th September, 1838.

2. The Marriage Law Amendment Act, No. 28 of 1897, is hereby repealed.

3. This Act may be cited as "The Marriage Law Amendment Act, 1906."

Act No. 28 of 1897 repealed.

Short Title.

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CHAPTER I.

INTRODUCTION.

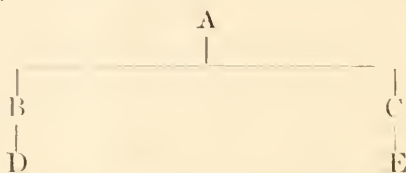
The object of this publication is to render available, in a convenient form, the Law with which those who may be called upon to solemnize marriages are expected to make themselves acquainted. That law is contained in a number of Orders in Council and Acts of Parliament. Since the first appearance of this little work, some very important changes have been made in the law, which render a new edition desirable. Our law empowers certain persons to celebrate marriages. They are Ministers of the Christian religion, Magistrates, and persons appointed Marriage Officers by the Governor. Ministers of the Christian religion require no appointment as Marriage Officers. Those ministering the Jewish religion and Mohammedan priests must be specially appointed by the Governor. They solemnize marriages in their capacity as Marriage Officers and not as Ministers of Religion. It is not always easy to decide whether any person professing to be a Minister of the Christian religion is such a Minister as is contemplated by the Law. The question is one of fact, and the cases on the subject fail to establish any very decided principle capable of application. The Court must decide on the merits of each case.

The contract of Marriage is of a peculiar nature, and the law requires conditions to be fulfilled and forms to be observed.

The law goes so far as to prohibit the contract in many cases. For instance, males under 14 years and females under 12 years are not allowed to marry. Where there is reason for supposing that either of the parties are within this prohibition they should not be married. If, however, the rule is unintentionally violated, the marriage will be validated on puberty being attained. As marriage, like other contracts, requires the consent of the parties, those who are *non compos mentis*, lunatics or imbeciles are deemed to be incapable of contracting a binding marriage. So also minors (under 21 years) not being widows or widowers, are prohibited from marrying without the consent of the parents, or the surviving parent, or guardians, as the case may be. This consent is sometimes implied; but in cases in which either party is a minor, the granting or withholding of the consent should be ascertained before solemnizing the marriage. The law grants relief in cases in which consent is improperly or vexatiously withheld, by empowering the Chief Justice to decide whether the parties may marry or not. The Chief Justice is also resorted to if the parents or guardians are not available from any cause, or are rendered legally incapable of giving their consent. Where a marriage is celebrated without the necessary consents, they may be given afterwards with effect. Our law has been judicially

interpreted as favouring the validity and binding nature of the contract, even though the necessary consents were absent; but this favourable view has not been extended to marriages by special licence.

Blood-relationship within certain degrees is an absolute bar to marriage. Relationship by blood in the direct line, *i.e.* between ascendants and descendants is a bar, however remote the relationship may be. But with regard to "collaterals" marriage is only prohibited within the second and third degrees. In order to ascertain whether the parties are within the prohibited degrees, the best mode is to count from the one to the other through the common ancestor. Subtracting one from the total gives the degree. Thus:—



There are five persons between D and E (inclusive): namely, D, B (D's father), A (D's grandfather), C (D's uncle), and E (D's cousin). E and D are therefore related in the fourth degree and may marry. D and C are related in the third degree and so cannot marry.

Persons related by affinity—that is to say not by blood but merely by marriage—used to be subject to similar rules. But the law has been considerably changed by the Act empowering a widower to marry his deceased wife's sister. This Act goes much farther. It enables the widower to marry any female related to him in any more remote degree of affinity than the sister of the deceased wife—*i.e.*, any female related by affinity beyond the second degree. It practically limits the prohibition to marry relations by marriage to such relations as are not beyond the second degree, or who are in the direct line as an ancestor of or descendant from the deceased wife.

The Act prohibits the widower marrying his deceased wife's sister *if she is a widow of his deceased brother*.

This limitation would clearly apply to any woman who is the widow of a deceased brother.

And a man need not be a "widower" in order to be qualified to marry a relative by affinity beyond the second degree.

The law was discussed in *Mills v. A. R. M. Cape*, 11 *Shield* 158. In his judgment Buchanan, Acting C. J., said, *inter alia*: "This enactment cuts away the general rule that prohibition extends up to the fourth degree as far as affinity relationships are concerned. . . . Our statute law now prohibits a widower from marrying any person who is an ascendant or descendant of his deceased wife, but with the exception of such wife's sister

who is also a widow of a deceased brother, it allows him to marry his deceased wife's sister, who is a person related by affinity, in the second degree, or any female who stands in any further or more remote degree. . . . The provisions of the Act should also be held to extend to a man who has not been previously married and who therefore has not himself created the tie of affinity. . . . It is significant that the Act does not limit the release from the prohibition to those related to a man only through his deceased wife ; *but generally makes it lawful for him to marry any female related to him in any more remote degree of affinity than that of his sister-in-law.*"

The Court held that as a widower is empowered to marry his *niece by affinity*, so also it allows a widow to marry her *nephew by affinity*.

Obviously, therefore, the table of prohibitions in the Book of Common Prayer in so far as relates to relationship by affinity is rendered useless as a guide in this Colony.

The principle is very easy of application. If any difficulty arises recourse should be had to the Colonial Secretary for advice.

A prior existing marriage, not legally dissolved or declared to be void, is a bar to a subsequent one, as long as the parties to the first are alive. As to the validity of the second marriage of one whose spouse has not been heard of for many years, by our law there is no presumption of death arising from absence for seven or for any number of years. But a person is not punishable for bigamy if, at the time of contracting the subsequent marriage, he or she reasonably believed his or her spouse to be dead. If the spouse has been absent for seven years or more, and notwithstanding due enquiries, has not been heard of during that period, such a belief, as a general rule, may be said to be reasonable, and the Marriage Officer will be justified in performing the marriage. Where it subsequently transpires that the previous husband is alive, the children of the subsequent marriage, *bona fide* connected, are deemed to be legitimate.

Marriage is prohibited between a spouse who has committed adultery and the adulterer or adulteress, as the case may be ; and this even after the termination of the marriage by divorce, or by death of the innocent party.

A guardian may not marry his ward until his accounts have been settled and audited ; and widows and widowers having minor children must satisfy certain statutory requirements before entering on re-marriage.

This brief introduction will be sufficiently supplemented by the statutory enactments at present in force, which are subjoined, and to which Marriage Officers and Ministers are referred for instruction on questions of procedure, registration, publication of banns, &c., &c.

CHAPTER II.

II.—ORDER IN COUNCIL, 7TH SEPTEMBER, 1838.

At the Court, at Windsor, the 7th day of September, 1838.

PRESENT :

The Queen's Most Excellent Majesty.

The Lord Chancellor
Earl of Albemarle.
Viscount Falkland.

The Viscount Palmerston.
Viscount Melbourne.
Lord Glenelg.

WHEREAS, since the abolition of Slavery throughout the British Colonies, Plantations, and Possessions abroad, the Marriage Laws of the said Colonies, Plantations, and Possessions have been found inappropriate to the altered condition thereof, and inadequate to the increased desire for lawful matrimony therein : And whereas, it is expedient and necessary to amend the said Marriage Laws, and to adapt the same to the altered state and condition of Society in the said Colonies, Plantations, and Possessions.

2. It is therefore hereby ordered by the Queen's Most Excellent Majesty, by and with the advice of Her Privy Council, that from and after the taking effect of this order, it shall be lawful for any minister ⁽¹⁾ of the Christian religion, ordained or otherwise set apart to the ministry of the Christian religion, according to the usage of the persuasion to which he may belong, to publish within the Colonies of British Guiana, Trinidad, St. Lucia, the Cape of Good Hope, and Mauritius, or any of them, banns of marriage between persons desirous of being joined together in matrimony, and such publication shall be made in an audible manner some time during public divine service on a Sunday, in the face of the congregation before whom such minister shall officiate, in the parish in which both or one of the parties to be married shall dwell, and shall contain the christian and other name and surname, and place of abode, of each of the said parties, and shall be so published by some such minister for three Sundays ⁽²⁾ preceding the solemnization of the marriage—during the morning service, if there be service in the morning ; or if there shall be no morning service, then during the evening service.

(1) If any doubt exists as to whether any person is such a minister the persons concerned should take legal advice (the question may be one of difficulty :—see *Kieherer v. Kieherer*. 2 Searle 81, *Schlechting v. Schlechting*, B. 1875. 24).

(2) This probably means three successive Sundays.

3. And if the parties to be married shall dwell in different parishes, the banns shall be published in like manner in both such parishes : and if the said parties shall be of different persuasions, the banns shall be published in like manner before each of the congregations to which the said parties may respectively belong, whether both the said congregations shall assemble in the same parish or not. ⁽¹⁾

(1) See Act 28—1897.

Marriage by
minister of re-
ligion.
Publication of
Banns.

Publication of
Banns in differ-
ent parishes
and churches.

4. And where one or both of the parties shall dwell in any extra-parochial place, then if there be a congregation of the persuasion to which any such party shall belong assembling for public divine worship as aforesaid in such extra-parochial place, the banns of the party or parties dwelling in such extra-parochial place shall be published in manner aforesaid in such extra-parochial place.

O. in C.—38.
Publication of
Banns in extra-
parochial
places.

5. And if there shall be no such congregation in such extra-parochial place, then the banns of such of the parties to be married as shall dwell in such extra-parochial place shall be published in manner aforesaid in some parish next adjoining to such extra-parochial place.

6. And in cases where the banns shall have been published in different places, the officiating minister at either of the said places shall, on the request of both or either of the parties whose banns shall have been published as aforesaid, give to the party requiring the same a certificate of the banns having been duly published in the place of which he is an officiating minister; and on the production of such certificate to the officiating minister of the other place where the banns were published, or of such certificates to any other such minister as aforesaid in the parish or extra-parochial place to which one of the parties shall belong, it shall be lawful for such minister where the banns were published, on receiving such certificate from such other minister where the banns were published, or for such minister as aforesaid, to whom the certificates of such ministers of both places where the banns were published [shall be produced], on receipt of such certificate or certificates (as the case may be), to solemnize matrimony between the said parties according to such form and ceremony as shall be in use or be adopted by the persuasion to which the minister solemnizing such marriage shall belong.

Certificate of
publication.

7. Provided that whenever the form and ceremony used shall be other than that of the United Church of England and Ireland (1) each of the parties shall in some part of the ceremony make the following declaration:

Declaration by
parties.

“I do solemnly declare that I know not of any lawful impediment why I, A. B., may not be joined in matrimony to C. D. here present.”

And each of the parties shall say to the other—

“I call upon these persons here present to witness that I, A. B., do take thee, C. D., to be my lawful wedded wife (or husband).”

(1) Or the Dutch Reformed Church (O. in C., 3 April. '40).

8. And it is hereby further ordered, that no minister shall be obliged to publish banns between any persons whomsoever, unless the persons to be married shall, two days at least before the time required for the first publication of such banns respectively, deliver, or cause to be delivered, to such minister, a notice of their true

Notice of
names and
abode of
parties.

O. in C.—38.

christian and other names and surnames, and a description of their place or respective places of abode in such parish or extra-parochial place as aforesaid, and of the time during which they have dwelt in such place or places.

Period within which marriage to be solemnized.

9. And that it shall not be lawful for any minister to solemnize any marriage after three calendar months from the last publication of banns of such marriage; and in all cases where three calendar months shall have elapsed without the marriage having been solemnized, the publication of such banns shall be void: and before the said parties can be married by banns, it shall be necessary to republish the banns anew in manner and form aforesaid, as if no banns had ever been published between them.

Marriage of minors.

10. And be it further enacted, that no such minister as aforesaid who shall solemnize any marriage after due publication of banns as aforesaid, between persons, both or one of whom (not being a widow or widower) shall at the time of such marriage be under legal age⁽¹⁾, shall be answerable or responsible, or liable to any pain, penalty, or proceeding, for having solemnized such marriage without the consent of the parents or guardians, or other person (if any) whose consent is required by law, unless such parents or guardians, or other person, or one of them, shall forbid the marriage, and give notice thereof to such minister before he has solemnised the same; and in case such marriage shall be forbidden as aforesaid, and such notice shall be given as aforesaid, the publication of the banns for such marriage shall be absolutely void.⁽²⁾

⁽¹⁾ *i.e.* Twenty-one. (Ord. 62-29).

⁽²⁾ The Father-in-law is presumed to have had notice: and if he fails to object before the marriage is contracted, it will not be set aside. (I. v. M. 10. J. 321. De Villiers C. J.)

Special licences.

11. And it is hereby further ordered that where by any law in force or which may hereafter be in force in any of the colonies to which this order applies by which licences⁽¹⁾ for marriage without the publication of banns may be granted or issued in any such colony by the governor thereof, or any other civil authority therein, it shall be lawful for the parties intending marriage, or either of them, to require that such licence shall authorise the solemnization of the marriage in respect of which such licence is applied for, in any place where and by any minister by whom such marriage could have been solemnized by virtue of this act, if banns thereof had been published as aforesaid.⁽²⁾

⁽¹⁾ See Act 9, 1882.

⁽²⁾ A fee of £5 is payable for a special licence. The licence authorizes the marriage at any place within the Colony. (Act 9, 1882.)

Marriage officers, appointment.

12. ⁽¹⁾ And whereas it may happen that in some of the colonies to which this order applies, or in some parts thereof respectively, there may not be any such minister as aforesaid, or not a sufficient

⁽¹⁾ See Act 16, 1860. Secs. 1, 3, and 4.

number of such ministers to afford convenient facilities for marriage, and it is expedient to provide for such cases : O. in C.—38.

It is, therefore, further ordered, that in every such case, and whenever the same shall happen in any of the said colonies, it shall be lawful for the governor of such colony to appoint, by writing under his hand and official seal, one or more such fit and proper person or persons as he shall from time to time deem necessary or expedient, to be called the marriage officer, to solemnize marriages within such part or parts of the colony in which such appointment shall be made, as the governor shall from time to time direct : and it shall be lawful for the governor at any time and from time to time to revoke and cancel any such appointment or appointments, and to alter, vary, enlarge or contract the district or districts in which any person so appointed shall have power or jurisdiction to celebrate marriage for any cause which to him shall seem meet : and every such appointment shall specify the part or district within which the person thereby appointed shall have power and jurisdiction to celebrate marriage.

13. And until some law shall be made, passed, allowed and promulgated for regulating marriages by persons so appointed, it shall be lawful for the governor, and he is hereby required to direct, declare, and promulgate the manner by which the intention of parties to marry before any such marriage officer shall be made public.

Marriage before marriage officer.

14. Provided always, that it shall not be lawful for any such marriage officer to solemnize marriage between persons, one or both of whom shall be under lawful age (unless in the case of a widow or widower), after such marriage shall be forbidden, and notice thereof given to him by any person having lawful authority to forbid the same.

Marriage of minors before officer.

15. Provided always, that in every marriage before any such marriage officer not celebrated according to the form of the United Church of England and Ireland (1) the parties shall in some part of the ceremony respectively make the declarations hereinbefore set forth, as in the case of marriage by any such minister as aforesaid.

Declaration by parties.

16. Provided also, that every such minister as aforesaid may nevertheless publish banns and celebrate marriage under and by virtue of this order in any part or district within which any such marriage officer shall have power or jurisdiction to celebrate marriage, as fully as if no such marriage officer had ever been appointed.

Marriage officer co-ordinate with minister.

17. (1) And whereas it may happen that the parents or parent, guardians or guardian, of one or both of the parties to be married, may be *non compos mentis*, or absent from the colony, or otherwise incapable in law or in fact of consenting, or may be induced unreasonably and improperly to withhold his, her, or their consent to a proper marriage, or may be dead :

On failure of consent by parents or guardians, consent of Chief Justice necessary.

(1) The powers hereby conferred may be exercised by the Chief Justice, Judge Presidents or Senior Judges (Section 55 of Act 35—96).

O. in C. 738.

It is, therefore, hereby ordered, that in case any such parent or guardian whose consent is necessary to a marriage, shall be *non compos mentis*, or absent from the colony, or otherwise incapable as aforesaid of consenting, or shall withhold his, her, or their consent to any marriage, or in case there shall be no one capable of consenting, it shall be lawful for any person desirous of marriage, to whose marriage such consent is necessary, but cannot be given, or is withheld, to apply by petition to the chief civil judge, or person officiating as such for the time being, of the colony, who is hereby empowered to proceed upon such petition in a summary way; and in case the marriage proposed shall upon examination appear to him to be proper, the said chief civil judge, or person officiating as such, shall judicially declare by his order, in writing, that such marriage is proper and may be solemnized forthwith; and every marriage duly solemnized in pursuance or under the authority or direction of such order shall be as good, valid, and effectual to all intents and purposes whatsoever, as if such consent as aforesaid had been duly given thereto. ⁽¹⁾

⁽¹⁾ The Chief Justice has held that the result of want of consent is that the marriage may be rendered invalid at the suit of the parents or guardians, but that consent subsequent to the marriage is effectual; that marriage after banns or notice to the Resident Magistrate, without objection by the parents or guardians is valid; but that marriage by special licence without notice to parents or guardians may be set aside (L. r. M., 109, 318).

After solemnization certain matters need not be proved.

18. And it is hereby further ordered, that after the solemnization of any marriage under or by virtue of this act, it shall not be necessary in support of such marriage, or in any action, suit, or proceeding, when the same may come into question, to give any proof of the actual dwelling of the parties married, or of either of them, before the marriage, or that the banns were published, or that the marriage was solemnized in the place and by a person where and by whom the same ought to have been published and solemnized respectively, nor shall any evidence be received to prove the contrary. ⁽¹⁾

⁽¹⁾ In S. v. S. (B. 75, 24) it was held that the non-qualification of the person celebrating the marriage did not affect its validity.

No action to enforce marriage.

19. And it is hereby further ordered that in no case whatsoever shall any suit or proceeding be had in any court or before any jurisdiction whatsoever, to compel the celebration of any marriage by reason of any promise or marriage-contract entered into, or by reason of seduction or of any cause whatsoever, which shall arise after the taking effect of this order, any law or usage to the contrary notwithstanding:

Damages claimable for breach of promise or seduction.

20. Provided, always, that nothing herein contained shall prevent any person aggrieved from suing for, or recovering, damages in any court or by any proceeding wherein and whereby damages may be lawfully recovered for breach of promise of marriage, or for seduction, or other cause as aforesaid.

21. And in order to preserve evidence of marriages, and to make the proof thereof certain and easy, and for the direction of such ministers and marriage officers as aforesaid in the registration thereof, it is hereby further ordered, that from and after the passing and taking effect of this order, all marriages (except marriages by special licence to marry at any time and place where such special licences can be lawfully granted), shall be solemnized with open doors, between the hours of (eight) in the forenoon, and (four) in the afternoon, in the presence of two or more credible witnesses, besides the minister or marriage officer who shall solemnize the same; and that immediately after the solemnization of every marriage, the entry thereof shall be made in a marriage-register book, to be kept for that purpose, by some such minister or marriage officer as aforesaid, or in some safe custody, for the place in which marriages may be solemnized; and in every such entry in every such register it shall be expressed that the marriage was had by banns or licence; and if both or either of the parties married by licence be under age, and not a widow or widower, that it was had with the consent of the parents or guardians, or other person or persons having lawful authority to withhold consent to the marriage, or after such order of the chief civil judge, or other person officiating as such as aforesaid; and shall be signed by the minister or marriage-officer, as the case may be, with his proper addition, and by the parties married, and shall be attested by such two witnesses; and every such entry shall be in the form or to the effect of the following specimen:—

O. in C.—'38.
Hours for
marriage.

Register of
marriages.

ORIGINAL REGISTER.

1838. *Marriages solemnized at George Town, in the Parish of ——— in the County of ———, 1838.*

No.	When married.	Names and Surnames.	Ages.	Condition.	Rank or Profession.	Residence at the time of marriage.	After Banns or Licence.	Consent, by whom given, or Judge's Order.
1	1st Aug. 1838.	John Williams Lucy Chambers	Full Age. Minor	Bachelor Spinster	Carpenter		After Banns.	Henry Chambers, Father.

Married, in the Wesleyan Chapel, at George Town aforesaid, after Banns, by me, A. B., Wesleyan Minister.

This Marriage was solemnized between

*us, { John Williams, } In the presence of us, { C. D.
{ Lucy Chambers, } { E. F.*

O. in C.—38.

and of every such entry, at the same time, before the parties depart, shall then and there be made in a separate piece of paper, parchment, or vellum, a duplicate original register, in which the same matter shall be entered and signed, and attested by the same parties in manner or to the effect of the following specimen :

DUPLICATE ORIGINAL REGISTER.

1838. *Marriages solemnized at George Town, in the Parish*
of ——— in the County of ———, 1838.

When married.	Names and Surnames.	Age.	Condition.	Rank or Profession.	Residence at the time of marriage.	After Banns or Licence	Consent, by whom given, or Judge's order.
1 1st Aug., 1838.	John Williams., Lucy Chambers	Full age Minor	Bachelor Spinster	Carpenter		After Banns	Henry Chambers, Father

Married, in the Wesleyan Chapel, at George Town aforesaid, after Banns, by me, A. T., Wesleyan Minister.

This Marriage was solemnized between

us, { John Williams., } in the presence of us, { C. D.
Lucy Chambers., } { E. F.

Examined with the original Register, by me, and found to be correct. A. B.

which said duplicate original register shall be left in the hands of the minister or marriage officer by whom the marriage was solemnized : and every such duplicate original register shall, within one calendar month from the date thereof, be transmitted to the Colonial Secretary of the Colony, if there be one, and all such duplicates shall be filed and safely preserved by him in his office ; and every such original register, and also every copy thereof, certified under the hand of the minister or marriage officer, who for the time being shall have the lawful custody of the original, to be a true copy, and every such duplicate original register, and also every copy thereof, certified under the hand of such Colonial Secretary to be a true copy, shall respectively be good evidence of the facts therein recorded, in pursuance of this order, in and before all courts and proceedings whatsoever, in which it shall be necessary to give evidence of the marriage to which the same shall relate ⁽¹⁾.

(1) See *Matomela v. Matomela*, 2 E.D. 12 (proof of marriage—documentary).

Hodges v. H. B., '69, 297, do.

Prickett v. P. B., '68, 25, do.

Rykie v. R. B., '68, 114, do.

Lee v. L. 7 H. C. G., 238 do.

A marriage may however be proved in a Court of Justice by *e.g.*, evidence of 25 years living together (*T. B. S. v. Du Preez*, 5 J., 269) or of general repute coupled with cohabitation (*H. v. H.*, 1 M., 281).

22. And it is hereby further ordered, that it shall be lawful for all persons at all reasonable times in the day (except Sundays), to search the original register book, and also the file of duplicate original registers, in the presence of the person for the time being having the care of the same respectively, or his deputy, and to have a true copy or true copies of any entries or entry therein, or filed as aforesaid, certified under the hand of the minister, marriage officer or officer for the time being respectively, having the custody of the original or duplicate original register as aforesaid (as the case may be), which true copies or copy such minister, marriage officer, or Colonial Secretary is hereby required to make, examine, and certify under his hand to be a true copy, in the form of the duplicate original register, except that the same shall be headed "certified copy (or copies) of original (or duplicate original) marriage register" (as the case may be), and shall be dated on the day, month, and year, when the same shall be delivered.

O. in C.—38.
Searches in
Register.

23. And it is hereby further ordered, that in order to meet the expense and as a remuneration for the trouble occasioned by the performance of any duty under this order, the following fees shall be demandable and payable before the performance of the duty to which the same respectively relate, that is to say:—

Fees Payable.

For solemnizing and registering a marriage, and transmitting the duplicate original to the Colonial Secretary, *four shillings*.

For every general search not directed to any particular entry, *four shillings*.

For every search for a particular entry, *two shillings*.

For every search for two or more particular entries, and not exceeding four entries, *one shilling* each.

For every search for any number of particular entries exceeding four, *four shillings*.

For every such certified copy as aforesaid, *two shillings*.

24. Provided always that nothing herein contained shall prevent any clergyman of the established Church of England and Ireland from receiving for any duty performed by him under this order, such fees or payments as have heretofore been customarily paid to such clergyman, according to the rules of the said church, for the performance of such duties respectively.

Customary fees
to English
Clergy.

25. Provided always, that nothing in this order contained, shall authorize or require any clergyman of the established church aforesaid, to solemnize marriage in any other manner than is prescribed by the rubric.

Clergy to
follow rubric.

26. Provided also, that it shall be lawful for the Governor to authorize such marriage officers as aforesaid to receive such further or other remuneration as he shall from time to time think the nature of their duties shall reasonably require.

Remuneration
of marriage
officers.

27. And it is hereby further ordered, that if any person shall unlawfully and maliciously erase, obliterate, or destroy, or cause

Injury to
Register.

O. in C.—38.

or procure to be erased, obliterated, or destroyed, any such original register or duplicate original register as aforesaid, such person shall be deemed guilty of a misdemeanour ⁽¹⁾, and, on being duly convicted thereof, shall be liable to be imprisoned in the common gaol in the jurisdiction in which he shall be tried and convicted thereof, for any term not less than three, nor exceeding twelve calendar months.

(1) To be read as meaning "offence."

Falsification of Register.

28. And if any person shall unlawfully and wilfully forge or alter, or falsely make, or cause or procure or permit to be forged or altered, or falsely made, any such original register, or duplicate original register, or any certified copy thereof respectively, or shall knowingly and wilfully deliver, offer, alter, or put off any such forged, false, or altered copy, he shall be liable for such his offence, on conviction thereof, to be imprisoned in such gaol as aforesaid, for any term not exceeding eighteen months, nor less than six months.

Local legislation.

29. And it is hereby further ordered, that it shall and may be lawful for the respective local legislatures of the said Colonies of British Guiana, Trinidad, St. Lucia, Cape of Good Hope, and Mauritius, by any ordinance to be by them for that purpose made, to provide for the better adaptation of this present order to the local circumstances of such colonies respectively: provided that such ordinance be not in contradiction or repugnant to any of the provisions of this order, and that all such ordinances be made, confirmed, or disallowed, as the case may be, in the manner and according to the rules provided by law in reference to any other ordinances of the said respective local legislatures.

30. And whereas, since the abolition of slavery in the British colonies, plantations, and possessions abroad, doubts have arisen and exist as to the validity of certain marriages contracted and solemnized previous to the abolition of slavery in the said colonies, plantations, and possessions, between slaves, and between parties one of whom was a slave, and also in some cases between free persons of colour, and since the abolition of slavery, between apprentices and other persons of free condition, by ministers of the Christian religion other than clergymen of the United Church of England and Ireland, and it is expedient and necessary that all such doubts should be removed, and such marriages and reputed marriages should be ascertained and confirmed, and that all persons who may have solemnized any such marriages or reputed marriages, or who have in any manner assisted thereat, should be indemnified from and against all pains, penalties, forfeitures, and proceedings, to which such persons, or any of them, may be liable therefor.

Confirmation of doubtful marriages.

31. It is therefore further ordered, that all marriages which at any time before the taking effect of this order shall have been solemnized in any of the colonies to which this order applies, by or before any such ministers of the Christian religion as aforesaid, shall be and the same are hereby declared to be and to have been

from the time of the solemnization thereof, respectively good, valid, and effectual to all intents and purposes whatsoever, any law or usage to the contrary thereof in any wise notwithstanding; and all pains, penalties, forfeitures, and proceedings of whatsoever kind or description which any such Christian minister may have incurred or become liable to before the taking effect of this order, by reason of his having solemnized or assisted at any marriage whatsoever, or in any wise in relation thereto, is and are hereby remitted, released, repealed, and made void. O. in C.—38.

32. And whereas, in the colonies in which marriages have been celebrated as aforesaid, registers thereof have been duly made and kept by such ministers as aforesaid who officiated thereat, it is therefore further ordered that all such registers, and all copies thereof respectively certified under the hand of the person for the time being having the lawful care of the same to be true copies, shall be, and are hereby declared to be, good evidence of such marriages as aforesaid respectively, as fully as if such registers had been made and kept, and such certified copies had been made respectively by persons appointed by law to make and keep the same, and shall be received in evidence in all courts and before all judges and magistrates. Registered certificates of such doubtful marriages.

33. And it is hereby further ordered, that the better to preserve evidence of marriages so registered, and to facilitate the proof thereof, every person in whose custody any register lawfully is or shall be at the time, shall within six months after the promulgation of this order, to which the same extends, respectively make, or cause to be made, a fair and correct copy of every such register and of every entry therein contained, and it shall be lawful for any such Christian minister as aforesaid to examine, verify, and correct (if and where found incorrect) by the original, any such copy of a register kept by the persuasion to which he belongs, and to take the same before any magistrate, and make and sign the following declaration, which any magistrate to whom the same shall be tendered is hereby authorized and required to receive and to certify, in manner following, that is to say:— Record of such registers.

I, A. B. (describe the persuasion to which he belongs), do hereby solemnly, sincerely, and truly declare, that I have carefully examined this copy, beginning the _____ day of (month and year), and ending on the _____ day of (month and year), and containing _____ pages and entries of marriage, with the original register, and I believe the same to be throughout a true and faithful copy of the original register, of which it purports to be a copy.

(Signed) A.B.

The said A. B. appeared this _____ day of _____ before me, C. D., one of Her Majesty's Justices of the Peace in and for _____ and made and signed the above declaration in my presence.

(Signed) C.D.

O. in C.—38.

Which declaration and magistrate's certificate thereof shall be entered and signed at the end of the copy to which it relates, and the copy shall be then securely sealed up, and forthwith sent to the Colonial Secretary as aforesaid, to be by him kept with the registers of marriages in his office, where the same may be searched, and every copy of any entry therein certified under his hand to be a true copy, shall be of the same force and effect as any certified copy whatsoever made by him is, or can be, and which certified copies he is hereby required to make, and may receive payment for, as in other cases.

False declarations re such Registers.

34. And if any such minister as aforesaid shall wilfully make and sign any such declaration, knowing the same to be false, he shall be liable to the pains and penalties to which persons guilty of wilful and corrupt perjury are liable.

De facto marriages.

35. And whereas, in consequence of imperfect instruction in the Christian religion, and from other causes, many marriages *de facto* have taken place between persons, one or both of whom were in the condition of slavery, but which marriages *de facto* have never been sanctioned by any public ceremony or formally registered, and in many such cases the parties have had offspring of such lastmentioned marriages: and it is expedient that provision should be forthwith made, for enabling such persons to confer upon their children the benefit of children born in lawful wedlock;

36. It is therefore further ordered, that it shall be lawful for all persons, having contracted marriage as last aforesaid, at any time within one year after the coming into operation of this order, duly to solemnize the marriage ceremony before any clergyman of the established church, or in any other manner authorized by this order: and every person so recognizing a previous marriage *de facto*, shall at the same time make and sign the following declaration, which shall also be attested by the witnesses present, and signed by the minister or marriage officer before whom the ceremony is performed.

We, A. B. and C. D., do hereby solemnly, sincerely, and truly declare, that on the day of in the year or thereabout, at we, the said A. B. and C. D., intermarried with each other, and that we have had issue of the said marriage children and no more, namely:—(here state the names and ages of the children, and if any be dead, state the fact).

(Signed)

A. B.

C. D.

X. Y.

Relation back of ceremony as to *de facto* marriages.

37. And such marriage ceremony shall have relation back to the time of the marriage *de facto*, and all such children shall be deemed and taken to have been born in holy wedlock, and shall possess and enjoy all the rights, privileges, and advantages of persons born in lawful wedlock: and to preserve evidence thereof, a duplicate original declaration shall then and there before the parties depart, be made, signed, and attested in the same manner,

and the original declaration shall be appended to and kept with the original register, and the duplicate original declaration shall be appended to, sent and kept with the duplicate original register, and shall for all purposes of evidence be deemed part thereof respectively : provided always, and it is hereby declared, that such lastmentioned ceremony and declaration may be performed and made without the previous publication of banns or a licence.

38. And it is hereby further ordered that where, in any colony to which this order applies, any other language than English shall be commonly used, the governor shall cause a true and faithful translation of this order, and particularly of the several forms and declarations herein contained, to be made, expressing the true intent and meaning thereof ; and such translation, when promulgated by the governor, may be lawfully used by all persons speaking such language ; and everything done under this order by means of such translation shall be as valid and effectual, to all intents and purposes whatsoever, as if the same had been done in the original language of this order, any law or custom to the contrary notwithstanding.

39. And it is hereby further ordered, that the word “ governor ” in this order shall be taken to mean the governor or other officer lawfully administering the government of such colony, and the word “ parish,” in colonies divided into parishes, shall be taken in its ordinary sense, and in colonies not divided into parishes shall be taken to mean such other districts or divisions as for civil purposes are equivalent to parishes ; and the term “ extra-parochial place ” shall be taken to mean any place not included in any such parish, district, or division ; and if in any case there be no such district or division, or if it be uncertain to what kind of district or division the word “ parish ” is hereby intended to apply, the same shall be determined and officially declared by the governor.

40. And it is further ordered, that this order shall take effect and come into operation in the Colony of Mauritius on the first day of February, one thousand eight hundred and thirty-nine ; in the Colony of the Cape of Good Hope on the said first day of February, one thousand eight hundred and thirty-nine ; and in all other colonies to which it applies or extends, on the first day of December, one thousand eight hundred and thirty-eight.

41. And it is further ordered and declared, that within the meaning and for the purposes of this order, all islands and territories dependent upon any of the colonies to which this order applies or extends, and constituting parts of the same colonial government, shall respectively be taken to be parts of such respective colonies.

42. And the right Honourable Lord Glenelg, one of Her Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

C. C. GREVILLE.

O. in C.—38.

Translation of
this order.

Interpretation.

Operation.

Local operation.

O. in C.—39.

O. in C.—40.

III.—ORDER IN COUNCIL.

February 20th, 1839.

Whereas on the 7th day of September, 1838, an order was passed by Her Majesty with the advice of Her Privy Council for giving validity to certain Marriages contracted within the Colonies of British Guiana, Trinidad, St. Lucia, the Cape of Good Hope, and Mauritius, and for regulating the celebration of Marriages therein hereafter in certain cases: And whereas doubts have arisen whether according to the right construction of the said order the legal effect thereof is not to take away the right theretofore vested in the clergy or ministers of religion within the said Colonies to the fees heretofore payable to them on the celebration of Marriages therein: Now, therefore, for the removal of such doubts it is hereby declared and ordered by the Queen's Most Excellent Majesty with the advice of her Privy Council that nothing in the said recited Order contained extends or shall be construed to extend to deprive any clergyman or any minister of religion in any of the said Colonies hereafter celebrating any marriage therein of any fee, perquisite, or emolument on such celebration which would have been legally payable to him thereupon if the said recited Order had not been made, or to take away from any such clergyman or minister any right of action or other remedy which could have been had by him for the recovery of any fee, perquisite, or emolument, on any marriage hereafter to be celebrated by him if the said recited Order had not been made, anything in the said recited Order contained to the contrary notwithstanding.

And the Most Noble the Marquess of Normanby, one of Her Majesty's principal Secretaries of State, is to give the necessary directions herein accordingly.

C. GREVILLE.

IV.—ORDER IN COUNCIL.

[Published in *Gazette* of 31st July, 1840.]

April 3rd, 1840.

At the Court at Buckingham Palace, the 3rd day of April, 1840.

PRESENT:

The Queen's Most Excellent Majesty.

Lord Chancellor,
 Lord President,
 Lord Privy Seal,
 Marquis of Normanby,
 Lord Steward,
 Lord Chamberlain,
 Earl of Albemarle,

Earl of Minto,
 Viscount Palmerston,
 Viscount Melbourne,
 Viscount Duncan,
 Viscount Morpeth,
 Lord Holland,
 Mr. Macanlay.

Whereas by an Order made by Her Majesty in Council on the 7th day of September, 1838, it was, amongst other things, ordered that whenever the form and ceremony used in the solemnization of marriages at the Colony of the Cape of Good Hope, should be other than that of the United Church of England and Ireland, each of the parties should in some part of the ceremony, make a certain declaration therein set forth, and should each address to the other certain words therein prescribed :—And whereas it has been represented to her Majesty, that the ceremonial of marriage previously in use by the Reformed Dutch Church in the said Colony prescribes the use of a declaration and the use of words by parties contracting marriage, equivalent to the declaration and the words so prescribed as aforesaid by the said order of Council,—It is therefore ordered by the Queen's Most Excellent Majesty, by and with the advice of Her Privy Council, that so much of the said recited Order in Council shall be, and the same is hereby, repealed so far as the said Order requires, that at marriages celebrated at the Cape of Good Hope according to the form and ritual of the Dutch Reformed Church, the before-mentioned declaration shall be made, and the before-mentioned words spoken.

Act No. 12. 56.
Marriages celebrated in Dutch Reformed Church

And the Right Honourable Lord John Russell, one of Her Majesty's Principal Secretaries of State having the Department of the Colonies, is to give the necessary directions herein accordingly.

C. GREVILLE.

V.—Act No. 12 of 1856.

AN ACT

For Better Securing in Certain Cases the Inheritances of Minors.

Whereas, from ignorance, neglect, and other causes, it not unfrequently happens that the survivor of two spouses, who, at the time of the death of the first dying of them, had children of their marriage, under age, not merely fails to settle for, or secure in proper time, and in the usual way, the inheritances accruing to such minor children out of the estate of their deceased parent, but proceeds to marry again, without settling for or securing such inheritances, whereby confusion and litigation are likely to be created, and such minors are exposed to the risk of injury and loss: And whereas, whilst it is the duty of the several matrimonial courts of the Colony, before which all persons about to be married by special licence are bound to appear, to ascertain, in the case of widowers and widows having minor children of a former marriage,

Act No. 12.—56 that the inheritances which have devolved upon such minors have been settled for or secured, no provision exists of the same nature or with the same object in regard to surviving spouses who are minded to marry, not by special licence, but by banns: And whereas it is expedient to make such provision: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Duty of widow
or widower in
inheritance of
minors on re-
marriage.

I. As often as any widower or widow, ⁽¹⁾ being the parent of any minor child, entitled to claim from such widower or widow any inheritance out of the estate of his or her deceased spouse, shall be minded to contract another marriage, and to that end shall be desirous to have the banns of such intended marriage published by any minister of religion or marriage officer in this Colony, such widower or widow, or his or her agent, shall obtain and deliver to the Resident Magistrate of the district in which such banns are intended to be published, a certificate, signed by the Master of the Supreme Court, certifying that the amount of inheritance due to such minor child as aforesaid, from and out of the estate of his or her deceased parent, has been paid into the Guardian's Fund, or otherwise, a certificate from the Registrar of Deeds, certifying that the customary bond or obligation, commonly called a "Kinder Bewys," is registered in the debt Registry, for securing the amount of such inheritance: Provided that should it be necessary to publish the banns of any such marriage in more districts than one, then one such certificate as aforesaid shall be delivered to the Resident Magistrate of each district; or otherwise one such certificate shall be delivered to one of the said Magistrates, and a copy thereof, certified by such Magistrate to be correct, shall be delivered to the other Magistrate: And provided, also, that the said Master and the said Registrar shall, upon request, grant such certificates as aforesaid, without fee or charge.

(1) Sec. 14 of Proc. 23, May, 1805, enacted that publication of Banns should not be granted to widows or widowers having children of a former marriage unless it was satisfactorily shown that security had been properly given and that the Deed passed had been registered. Section 22 of Ordinance No. 105 prohibited the marriage of the father or mother of minor heirs by a previous marriage until production to the Matrimonial court of a certificate under the hand of the Master or duly appointed tutor or tutors testamentary or dative or curator or curators bonis that the shares due to the minors out of the joint estate had been ascertained and secured according to law.

Magistrate's
certificate.

II. The Resident Magistrate, upon receiving such a certificate or attested copy of certificate as aforesaid, shall deliver to the party delivering the same to him a certificate signed by him, certifying that it has been made to appear to him, that no reason exists, arising out of unsecured inheritances of minor children, why the banns of marriage of the widower or widow who shall be named in such certificate shall not be published.

III. In any case in which any widower or widow, having any minor child who is alleged not to be by law entitled to any inheritance from or out of the estate of his or her deceased parent, shall be minded to contract another marriage, such widower or widow shall apply to the Resident Magistrate of the district in which banns are desired or required to be published, for a certificate, of the like tenor as that in the last preceding section mentioned: Provided that in any such case, involving matter of law, which the said Magistrate shall decline to take upon him to determine without legal advice, he shall require the party applying for such certificate to state, under the inspection and subject to the correction of such Magistrate, a case for the written opinion of the Attorney-General of the Colony, and to obtain such opinion for the information of such Magistrate, who shall grant his certificate as aforesaid, in case the said Attorney-General shall be of opinion that the minor child or children in question are not, by law, entitled to any inheritance from or out of the estate of its or their deceased parent; but who shall withhold such certificate in case the said Attorney-General shall not give such an opinion as aforesaid, as also in case no opinion of the said Attorney-General shall be produced: Provided, further, that when any such banns as in this section mentioned are desired or required to be published in each of two districts, a certificate from each Resident Magistrate shall be necessary: and provided, also, that it shall be lawful for any such Magistrate to grant his certificate, although he shall not have received the certain other certificate in the first section mentioned,—in case it shall be made to appear to him by the party applying for his certificate that the value of the joint estate in question in such case was under one hundred pounds sterling.

IV. In any case under this Act in which the Resident Magistrate shall see cause to withhold his certificate aforesaid, it shall be lawful for the person who shall have applied for such certificate to apply to a Judge of the Supreme Court, in chamber, for an order upon such Magistrate, to grant such certificate, and thereupon it shall be lawful for such Judge, in the most summary and least expensive manner, to inquire into the case, and after inspecting such documents and calling for such proofs as to him shall seem needful, to grant or refuse such order, as to him shall seem expedient: Provided that in no case shall the costs of making any such order be awarded against the Magistrate, unless the necessity for such order shall have arisen from his wilful neglect or default.

V. No such certificate as aforesaid, whether made upon a Judge's order or not, shall be of any force or effect in law, except simply to authorise the publication of banns of marriage; and all matters and things regarding the rights, inheritances, estates or interests of minors, and of all others, shall be judged of, after the granting of such certificate, precisely as if the same never had been granted.

Act No. 12. 156.
In case of doubt
or question as
to minor's title
to inheritance

Appeal to Judge
against refusal
by R. M. to
grant certifi-
cate.

Legal effect of
certificate.

Act No. 16.—'60

Banns not to be published till certificate produced.

VI. (1) No Minister of Religion or Marriage Officer shall publish the banns of any person whom he shall know to be a widower or widow, having a minor child or children of a former marriage, until there shall be delivered to him such a certificate as aforesaid, signed by the Resident Magistrate of the district in which such banns are desired or required to be published; and if any such Minister or Marriage Officer shall discover, after one or more publications of banns, that either of the parties intending to marry is such a widower or widow as aforesaid, then such Minister or Marriage Officer shall suspend the further publication of such banns until he shall be furnished with such certificate as aforesaid; Provided, also, that if such discovery as aforesaid shall be made after the publication of banns shall have been completed, such Minister or Marriage Officer shall not solemnize the marriage until such certificate shall have been delivered to him.

(1) See Act 9, 1882, as to marriage by special licence.

Date.

VII. This Act shall commence and take effect from and after the promulgation thereof.

Given at Government House, this 4th day of June, 1856.

By Command of His Excellency the Governor,

RAWSON W. RAWSON,

Colonial Secretary.

VI.—Act No. 16 of 1860.

ACT

To Amend the Law concerning Marriages (1).

WHEREAS it is expedient to afford additional facilities for contracting valid marriages: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

I. The several resident magistrates of this colony are hereby made and constituted marriage officers before whom marriages may be contracted.

Resident Magistrates to be marriage officers.

II. All and singular the causes and provisions in the schedule marked A, to this Act annexed, shall apply to marriages to be contracted before any resident magistrate, as fully and to all intents and purposes as if the said clauses and provisions were here set forth as so many sections of this act.

Application of laws.

III. All appointments of marriage officers heretofore made by the Governor of this Colony for the time being, are hereby ratified and confirmed, and declared to be, and to have been, as legal, valid,

Confirmation of appointments.

(1) Extended by Proclamation No. 145, 1887, to Transkei, Tembuland and Griqualand East; and to Port St. John's by Proclamation No. 178, 1892. See Act 40, 1892.

and effectual, as if the order of Her Majesty the Queen, in Council, of the seventh September, 1838, had, by express words authorized the making of every such appointment. Act No. 16. '60.

IV. The Governor may appoint in manner and form as in the twelfth section of the said order in Council mentioned, marriage officers for the purpose of solemnizing the marriages of persons professing the Jewish faith, and marriage officers for solemnizing the marriages of persons professing the Mohanmedan faith: Provided that no marriage solemnized by any such marriage officer shall be invalidated or impeached by reason that neither of the married parties belonged, or was reputed to belong, to the class or denomination for which such marriage officer was appointed. Marriage officers for Jews and Mohammedans

V. Any marriage for the solemnization of which a special licence shall have been obtained, may, upon the production of such licence to any resident magistrate named therein, be solemnized and contracted before such magistrate and witnesses, in manner and form as in the Schedule marked A, annexed to this act, directed and enjoined: Provided that, as often as a special licence shall be produced for authorizing the solemnization of any marriage, it shall not be necessary that notice of the intention to contract such marriage shall have been given, or posted, as in the said Schedule provided, and such marriage may, upon the production of such licence, be solemnized forthwith. Solemnization of marriage by special licence.

VI. The provisions of the Act No. 12, 1856, entitled "An Act for better securing, in certain cases, the inheritances of Minors," shall apply, *mutatis mutandis*, to all marriages solemnized after the taking effect of this Act by any resident magistrate, precisely as if the affixing of any notice of an intended marriage, as in the fourth clause of the said Schedule marked A, were a publication of banns. Provided, however, that no such certificate, as in the said Act mentioned, shall be issued. Application of Act 12, 1856.

VII. It shall not be lawful for any resident magistrate to demand or receive any fee, gratuity, or reward, for or by reason of anything done or to be done by him under or in pursuance of this Act. No fees by magistrate.

VIII. This Act may be cited for any purpose, as the Marriage Act, 1860. Title.

SCHEDULE A (1).

(1) Printed as amended by Act 9, 1882.

1. In every case in which any persons shall desire to contract a marriage before any resident magistrate, one of the parties shall give notice under his or her hand, or his or her mark, witnessed by two witnesses, in the form marked No. 1, to this Schedule annexed, or to the like effect, to the resident magistrate of the district within which the parties shall have dwelt for not less than fourteen days, and shall state therein the name and surname (if any) and the con- Notice of intention to marry.

Act No. 16,—66. dition and occupation or calling of each one of the parties intending marriage, the dwelling-place of each of them, and the time, not being less than fourteen days, during which each has dwelt therein: Provided that if either party shall have dwelt in the place stated in the notice during more than one calendar month, it may be stated therein that he or she hath dwelt there one month and upwards.

Parties living in different districts.

2. If the parties intending marriage, as in the last preceding section mentioned, dwell in different districts of resident magistrate, then one of the said parties shall give the like notice to the resident magistrate of each of the two districts.

Filing of notice.

3. Every resident magistrate receiving any such notice as aforesaid, shall file and preserve the same in his office, and shall also forthwith enter a true and fair copy of every such notice in a book to be kept by him in his office for that purpose, and to be called "The Marriage Notice Book," which book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same.

Posting of notice—reading in court.

4. Every resident magistrate receiving any such notice as aforesaid, shall cause the same, or a fair copy thereof, to be affixed in some conspicuous place, in or near his court-house or his office, and shall, at the next ensuing court of resident magistrate, held at the stated and ordinary place for holding such court, read the same in open court, and the said notice shall be so read at not less than two other courts so held as aforesaid: Provided that not less than three clear days shall elapse between each of the respective courts in which such notice shall be read, and provided that such notice shall be read as aforesaid three times within twenty-one clear days next after the receipt of such notice.

Objection to marriage.

5. Any person knowing any lawful impediment to the marriage of the persons named in any such notice as aforesaid, may, at any time during the twenty-one days aforesaid, by any writing under his hand addressed to the resident magistrate, and bearing the true name and place of abode of the person who shall have subscribed the same, lodge an objection to such marriage, stating the ground of such objection.

Previous Mohammedan marriage.

6. It shall be competent for any woman, to whom the man named in any such notice shall have been married according to the Mohammedan customs and usages, at any time, before the taking effect of this Act, to lodge upon that ground an objection to the intended marriage.

Consent by parents, guardians, &c.

7. Any person whose consent is required by law to the marriage of any person under the age of twenty-one years, named in any such notice as aforesaid, as one of the parties intending marriage, may, by any such writing as in the 5th clause of this Schedule mentioned, forbid such marriage.

After due notice marriage may be solemnized.

8. After the expiration of the twenty-one clear days aforesaid, then, in case no objection shall have been lodged, it shall be lawful

for the parties to contract marriage in the court-room or in the office of such resident magistrate, between the hours of nine and twelve in the forenoon, with open doors, and in the presence of such magistrate, and of two or more credible witnesses : or in case such resident magistrate shall think fit, at any dwelling-house within his district, and at any convenient hour of the day, in the presence of such witnesses as aforesaid : Provided that, as often as any notice of an intended marriage shall have been published in more districts than one, neither of the resident magistrates shall permit the marriage in such notice mentioned, to be so contracted, until it shall have been certified to him by the other magistrate that no objection has been lodged ; and provided that it shall be lawful for the resident magistrate to put to both or either of the parties intending marriage, all such questions as to him shall appear necessary, for determining whether there be, or be not, any lawful impediment to such marriage, and to refuse to permit such marriage to take place, unless satisfactory answers shall be given.

9. As often as any marriage shall be contracted in manner and form as in the last preceding section mentioned, each of the parties shall, in the presence of the magistrate and bystanders, declare as follows : "I do solemnly declare that I do not know of any lawful impediment why I, A.B., may not be joined in matrimony to C.D.," and each of the parties shall say to the other, "I call upon these persons here present, to witness that I, A.B., do take thee, C.D., to be my lawful wedded wife (or husband)," or the said parties may, with leave of the magistrate, in lieu and stead of the said forms, declare as follows : "I, A.B., do take thee, C.D., to be my lawful wife (or husband)." Provided that the words to be so spoken as aforesaid, may, when the parties, or either of them, shall be wholly or partially ignorant of the English language, be spoken in the Dutch language, or in any other language capable of being understood by the witnesses aforesaid.

10. A register of every such marriage so solemnized and contracted in the presence of any resident magistrate and witnesses shall be filled up by such magistrate, and shall be signed by him and by the parties married, and shall be attested by two witnesses, and shall be in the form marked No. 2, to this Schedule annexed.

11. After any marriage shall have been contracted in manner and form as in the 8th clause of this Schedule mentioned, it shall not be necessary in support of such marriage, or in any action, suit, or proceeding, in which the same may come into question, to give any proof of the actual residence of the parties married, or of either of them, before the marriage ; nor that notice of such marriage was duly or at all affixed or read ; nor that such marriage was solemnized in the place or within the hours by this Act prescribed ; nor shall any evidence be received to prove the contrary.

12. As soon as may be, after such marriage as last aforesaid shall have been solemnized, the resident magistrate shall cause

Act No. 16.—'60.

Declaration.

Register-signing, &c.

After solemnization certain matters immaterial.

Marriage Record Book.

Act No. 16.—160. such register to be copied into a book, to be kept for the purpose, and to be called "The Marriage Record Book," and shall, not later than one month after the solemnization of such marriage, transmit the said register to the Colonial Secretary aforesaid, and all such registers shall be preserved like, and be as evidence of the same force as, the duplicate original registers of marriage mentioned in the 21st Section of the Order in Council of the 7th September, 1838.

Period after notice marriage to be celebrated. 13. Whenever any such marriage as aforesaid shall not be solemnized within three calendar months after the expiration of the twenty-one days aforesaid, then the notice aforesaid, and all proceedings under it, shall be totally void; and in case of the desire of the parties to contract such marriage after such three months, fresh notice shall be necessary, precisely as if no former notice had been given.

Reference of objections to court. 14. As often as any objection to any marriage shall be lodged as aforesaid with any resident magistrate, such magistrate shall refer the same to the matrimonial court⁽¹⁾ of his district for consideration.

Procedure. 15. It shall be lawful for any matrimonial court to which any such objection shall be referred, to summon before it any person capable, or supposed to be capable, of giving information relative to any fact involved in such objection and in dispute between the parties, and to examine such person upon oath, which oath the presiding member of such court is hereby authorized to administer.

16. The process of the matrimonial court for summoning any witness to appear to give evidence before it, shall be, *mutatis mutandis*, the same as the process of the court of resident magistrate for summoning witnesses in civil cases, and shall be served in the same manner and have the same effect, and the fifty-second section of the Act No. 20, 1856, entitled "An Act to amend and consolidate the law relative to Courts of Resident Magistrates," shall apply to witnesses resident beyond the district of such matrimonial court, precisely as if such court were the court of resident magistrate for such district.

Counsel's opinion.

17. As often as any question of law, which the matrimonial court shall not feel itself competent to decide, shall arise in regard to any such objection, it shall be lawful for such matrimonial court to state a case for the opinion of counsel, and to require such of the parties to the matter in controversy, as such court shall think fit, to obtain the opinion of counsel upon such case, and to lay such opinion before such court at some future meeting thereof: Provided, that as often as the parties are in poor and indigent circumstances, her Majesty's Attorney-General for the Colony shall give his opinion upon all such cases, free of charge.

⁽¹⁾ The matrimonial court referred to in this section and hereunder is abolished and the resident magistrate's court is substituted therefor (Act No. 9. —'82).

18. In case any objection to any marriage shall be lodged as aforesaid, by any woman to whom the man who is desirous of having such marriage registered or solemnized, had previously and before the taking effect of this Act, been married according to Mohammedan customs and usages, the matrimonial court, in considering and deciding upon such objection, shall have regard to the conduct and character of such woman since such Mohammedan marriage took place, and unless such court shall be of opinion, upon proof made by the man, that the character and conduct of such woman, since such marriage, have been such that, had such marriage been in law a valid marriage, the man would have been entitled to claim, from any competent court, either a dissolution of such marriage or a separation from bed and board, the matrimonial court shall allow such objection, and thereupon such marriage shall not take place. And as often as any such last-mentioned objection shall be allowed, no future application by the same man for the registration or solemnization of any marriage (not being his marriage with the objecting party herself) shall, during the life of such objecting party, be capable of being entertained, except upon proof by the man, that the objecting party had, since the decision come to upon her said objection, been guilty of what, had they been in law married people, would have been adultery.

Act No. 16. '69.
Procedure
where Moham-
medan marri-
age objected.

19. It shall be competent for the matrimonial court to award against such of the parties to any objection as such court shall deem just and fitting, the reasonable costs (if any) of the other parties to such objection, or any of them; and such costs, when certified by the matrimonial court to the court of resident magistrate of the same district, shall be recovered by process of such last-mentioned court, precisely as it such costs had been costs awarded by such last-mentioned court in a civil case therein pending.

Costs.

20. Any person feeling himself aggrieved by the decision of any matrimonial court upon any such objection, may apply by petition to the Supreme Court in chamber, or to any judge of such court or Circuit Court, stating the alleged grievance and praying relief: Provided that notice, in writing, of the intention to present such petition shall be given to the resident magistrate of the district in and for which such matrimonial court exercises its functions, not later than seven days next after the day upon which the decision of the matrimonial court objected to, shall have been given.

Appeal.

21. It shall be lawful for the court or judge which shall receive any such petition, to cause notice of such petition to be given, by the party petitioning, to such other persons as such court or judge shall think fit, and to enquire into the matter thereof, and to call upon the matrimonial court whose decision is objected to for such explanations or information as such court or judge shall think necessary; and if need be, such court or judge shall take further

Directions on
appeal—sum-
mary inquiry.

Act No. 18, — 60. evidence, and in the most summary, effectual, and inexpensive manner determine the matter in controversy; and may make such order as to the costs of, or consequent upon such petition, as such court or judge shall think fit.

Argument by
counsel.

22. The court or judge aforesaid, may, if need be, direct the parties concerned in the matter of any such petition, to file pleadings, or may direct any question of law arising in any such case to be argued by counsel: Provided that if the parties to any such objection, or any of them, be in poor or indigent circumstances, the said court or judge shall assign them or him an attorney and advocate, who shall act free of charge.

Decision.

23. If the said court or judge shall disallow any objection which the matrimonial court shall have allowed, then the marriage which was objected to shall be proceeded with as if such objection had not been made; and if such court or judge shall allow any objection which the matrimonial court shall have disallowed, then the registration, or solemnization objected to, shall not take place.

On disallow-
ance of objec-
tion period
limited for
appeal.

24. When any matrimonial court shall have disallowed any objection to any marriage, such marriage shall not take place before the time at which it might have taken place in case no objection had been lodged, nor then, unless 16 until seven days shall have elapsed since the day upon which the decision of the matrimonial court disallowing the objection was given, in order to afford time for lodging notice of petition: Provided that the lodging of such notice shall be a stay of all proceedings touching such marriage, pending the decision upon such petition.

Frivolous
objections.

25. Any person who shall lodge an objection to any marriage, which objection shall be by the matrimonial court declared to be frivolous, shall be liable to an action for damages at the suit of the person whose marriage was objected to: Provided, however, that such person shall not recover any damages, unless the court in which the suit shall have been instituted shall find the objection to have been frivolous.

Penalties—
petitions,
notices or
objections.

26. If any person shall transmit, or cause to be transmitted, to any resident magistrate, any writing, purporting to be the notice of an intended marriage, or shall lodge or cause to be lodged with any resident magistrate an objection to any intended marriage, purporting to be lodged by or on behalf of some person objecting to such marriage, such person not having any authority from the person or persons named in such notice or objection to transmit or lodge the same, but wantonly and mischievously intending to subject the persons named in such notice or objection, or some of them, to ridicule or annoyance, shall, upon conviction, be liable to a fine not exceeding £50, or to imprisonment with or without hard labour for any period not exceeding three months, or to both such fine and such imprisonment.

Penalties—
false notices or
objections.

27. Any person who shall transmit to any resident magistrate any notice of an intended marriage, or any objection to an intended marriage, containing any statement knowingly and wil-

fully false, shall, upon conviction, be liable to a fine not exceeding £100, or to be imprisoned with or without hard labour, for any period not exceeding twelve months, or to both such fine and such imprisonment. Act No. 16.—'60

28. After any marriage shall have been contracted in manner and form as in the 8th clause of this Schedule mentioned, it shall not be necessary, in support of such marriage, or in any action, suit, or proceeding, in which the same may come in question, to give proof of the consent of any person whose consent to such marriage was required by law, nor shall any evidence be received to prove the contrary. After solemnization consents of parents, &c., irrelevant.

FORM No. 1.—NOTICE OF MARRIAGE.

To the resident magistrate of

I hereby give you notice that a marriage is intended to be had, within three calendar months from the date hereof, between me and the other party herein named and described, that is to say : Form of notice of marriage.

Name.	Condition.	Occupation or Calling.	Age.	Residence.	Length of Residence.
James Smith ..	Widower ..	Shopkeeper..	Full age	Bree-street, Cape Town	23 days.
Mary Jones ..	Spinster	Minor ..	Wynberg ..	More than a month.

Witness my hand this day of 18 .
(Signed) JAMES SMITH.

FORM No. 2.—MARRIAGE REGISTER.

No.	When Married.	Name.	Condition.	Occupation or Calling.	Age.	Residence.	Consent.— By whom given, or by Judge's Order.
1	Aug. 1, 1859 ..	Jas. Smith	Widower	Shopkeeper	Full age	Bree-street, Cape Town	
"	"	Mary Jones	Spinster	Minor..	Wynberg	Thos. Jones

(Signed) JAMES SMITH, { Witnesses to the } A.B.
MARY JONES, { Marriage } C.D.
THOMAS JONES.

Act No. 9.—82.

I, the undersigned, do hereby certify that the above marriage was contracted by the parties thereto, on the day of 18 , in my presence, and in the presence of the persons who have signed their names as witnesses, under and by virtue of the Marriage Act, 1860.

Dated at , this day of

18 .

(Signed)

J. M. H.,

Resident Magistrate.

Given at Government House, this 17th day of July, 1860.

By Command of His Excellency the Governor,

RAWSON W. RAWSON,

Colonial Secretary.

VII.—Act No. 9 of 1882. ⁽¹⁾

⁽¹⁾ Extended by Proc. No. 145, 1887, to Transkei, Tembuland and East Griqualand; by Proc. No. 178 of 1892 to Port St. John's; and by Proc. No. 340 of 1894 to E. and W. Pondoland.

ACT

To Regulate the Issue of Licences for the Solemnization of Marriages, and to Abolish Matrimonial Courts. [Assented to 14th June, 1882.]

BE it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repeals.

I. The fourth and fifth sections of the Ordinance No. 89, promulgated on the sixth day of February, 1832, the fourth section of the Act No. 11, 1860, the Government Notice dated the sixteenth day of April, 1839, and so much of any other Law or Ordinance as may be repugnant to or inconsistent with any of the provisions of this Act, shall be and the same are hereby repealed.

Courts of R. M. substituted for Matrimonial Courts.

II. The several powers and duties which are by certain clauses of the Schedule marked A to the "Marriage Act, 1860," directed to be exercised and performed by the Matrimonial Court of any district shall be exercised and performed by the several Resident Magistrates within the limits of their respective districts, and the said Schedule shall be read and construed as if the words "Resident Magistrate's Court" had been inserted in every clause wherein the words "Matrimonial Court" occur.

Special licences

III. The Resident Magistrate of every district is hereby authorized, subject to the provisions of this Act, to grant special licences for the solemnization of marriage at any time and at any place within the Colony, and every such licence shall be duly stamped with stamps denoting the duty by law payable, and shall be as nearly as is material in the form contained in the first Schedule ⁽¹⁾.

⁽¹⁾ The Stamp Duty is £5.

IV. Unless a marriage shall be solemnized in pursuance of any licence obtained and issued under the provisions of this Act within three months after the grant of such licence, such licence shall be of no effect, and no marriage shall be solemnized in pursuance thereof: nor shall any person having taken out a marriage licence be entitled to a refund of the amount paid for such licence, in case the marriage shall not be solemnized.

Act No. 9.—'82.

Licence to be void after three months.

V. No such licence shall be granted by any Resident Magistrate unless or until the intended husband and intended wife shall have made before such Magistrate, or before some Justice of the Peace, solemn declarations, in the form and to the effect set forth in the second Schedule, and all such declarations shall be preserved of record in the offices of the Resident Magistrates respectively.

Declarations to be made.

VI. No such licence shall be granted by any Resident Magistrate for the marriage of any widower or widow having minor children of a former marriage unless such Resident Magistrate shall be satisfied that the inheritances which have devolved upon such minors have been settled by payment into the Guardians' Fund or secured by the customary bond or obligation commonly called a "Kinderbewys" duly registered in the Deeds Registry, or unless it shall be made to appear to such Magistrate by the widower or widow as the case may be, that the value of the estate in question in such case was under one hundred pounds.

Provisions protecting minors by previous marriage.

VII. No licence shall be granted by any Resident Magistrate for the marriage of any person, not being a widower or widow, under the age of twenty-one years, unless and until there be produced to such Magistrate the written consent of the parents or guardians, or other persons (if any) whose consent is required by law, or an order of the Chief Justice of the Colony, granted in terms of the seventeenth section of Her Majesty's Order in Council, dated the seventh day of September, 1838.

Consents of parents, &c.

VIII. Any Resident Magistrate to whom application shall be made for any such special licence as aforesaid, may put to both or either of the parties intending marriage all such questions as shall be relevant and necessary for determining whether there be or be not any lawful impediment to such marriage, and may refuse to grant such licence unless satisfactory answers shall be given.

Questions which R. M. may put.

IX. Whoever shall commit any of the following acts or offences shall, upon conviction, be liable, at the discretion of the Court, to be imprisoned, with or without hard labour, for any term not exceeding five years:—

Offences.

- (1.) Make any declaration such as is referred to in the fifth section of this Act, for the purpose of obtaining a licence to marry, containing any wilfully false statement as to any fact therein alleged.
- (2.) Make any wilfully false statement in answer to any question put by any Resident Magistrate under the provisions of the eighth section of this Act, as to any fact material to be ascertained.

Act No. 9.—'82.

(3.) Forge or fraudulently alter any consent or writing purporting to be a consent to the marriage of any person being a minor under the age of twenty-one years.

(4.) Forge or fraudulently alter any licence of marriage.

X. This Act may be cited for all purposes as "The Marriage Licence Act, 1882."

THE FIRST SCHEDULE.

MARRIAGE LICENCE ACT, 1882.

It having been made to appear that there does not exist any legal impediment to A. B., of _____ in the district of _____

and C. D., of _____

in the district of _____

{ Bachelor }
{ Widower }
{ Spinster }
{ Widow }

being joined in wedlock : Licence is hereby given to their being united in marriage by any Minister of the Christian religion within the Colony, who could, by virtue of the Order of Her Majesty in Council, bearing date the 7th day of September, 1838, have solemnized such marriage, in case banns thereof had been duly published, or by a Resident Magistrate, or any other duly constituted marriage officer ; Provided that such marriage be celebrated within three months from the date hereof.

Given under my hand at

this _____

day of _____

, 18 ____.

Resident Magistrate
of the District of _____

THE SECOND SCHEDULE.

I { John Smith } (usual place of residence and occupation) do
solemnly and sincerely declare as follows :—
{ Mary Jones }

(1.) That I am a { Bachelor or Widower } and am (under
{ Spinster or Widow }
or above as the case may be) the age of twenty-one years.

(2.) That I have no knowledge of any just impediment or lawful objection by reason of any kindred relationship, or alliance of any former marriage, or the want of consent of parents or guardians, or any other lawful cause whatever, to my being married to { Mary Jones } of (usual place of residence), and in
{ John Smith } case of the bride, add : " daughter of John Jones, of _____"
(usual place of business and occupation), and I make this solemn declaration, conscientiously believing the same to be true, and with full knowledge that any wilfully false statement herein contained

will render me liable to imprisonment with hard labour for a term not exceeding five years. Act No. 40.—'92.
Act No. 28.—'97.

Declared at
this day of

Before me,

No. 40, 1892.]

[December 6th, 1892.

ACT

To Amend the Law relating to Marriage.

BE it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

1. So much of any law as may be repugnant to or inconsistent with the provisions of this Act is hereby repealed. Repugnant laws repealed.

2. It shall be lawful for any widower to marry the sister of his deceased wife, provided such sister be not the widow of a deceased brother of such widower, or to marry any female related to him in any more remote degree of affinity than the sister of his deceased wife, save and except any ancestor of or descendant from such deceased wife. Marriage with deceased wife's sister lawful.

3. Any marriage contracted between persons both of whom shall now be living which would be void, or voidable, by reason of any law by this Act repealed, shall be deemed to be as valid as if duly solemnized after the taking effect hereof : Provided such marriage shall not have been dissolved or declared invalid by the decree of any competent court. Such marriages already contracted, valid, if not declared dissolved or invalid by court.

4. Nothing in this Act contained shall be deemed to legalise or render valid the marriage of a man with the sister of a wife from whom he has been divorced. Marriage with sister of wife divorced prohibited.

5. This Act may be cited for all purposes as “ The Marriage Law Amendment Act, 1892.” Short Title.

ACT No. 28—1897.]

[July 1st, 1897.

ACT

To Amend the Law relating to Marriage by Banns.

BE it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

I. In cases in which banns of marriage shall have been lawfully published in different places, both of which shall be in this Colony, or one of which shall be in this Colony and the other in another country, it shall be lawful for the officiating minister in this Colony upon production to him of the certificates of the due publication of the banns, to solemnize the marriage between the parties whose banns have been so duly published, notwithstanding anything to the contrary in the Marriage Order in Council of the 7th September, 1838. Banns published in different places in this Colony or in a place in the Colony and a place elsewhere.

II. This Act may be cited for all purposes as “ The Marriage Law Amendment Act, 1897.”

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